

AMENDED IN SENATE JULY 7, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 628**

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**Introduced by Assembly Member Block**  
**(Coauthor: Assembly Member Harkey)**

February 25, 2009

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An act to amend Sections 23302 and 40255 of, *and to add Section 23301.5 to*, the Vehicle Code, relating to vehicles.

### LEGISLATIVE COUNSEL'S DIGEST

AB 628, as amended, Block. Vehicles: toll evasion violations.

(1) Existing law makes it unlawful for any person to refuse to pay tolls or other charges on any vehicular crossing or toll highway and provides that it is prima facie evidence of a violation of this provision for any person to enter upon any vehicular crossing without either lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person or a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls. A violation of these provisions is an infraction.

This bill would *require an issuing agency that permits pay-by-plate toll payment to communicate, as practicable, the pay-by-plate toll amount in the same manner as it communicates other toll payment methods and provide certain publicly available information on how pay-by-plate toll payment works. The bill would additionally provide that, for vehicular crossings and toll highways where the issuing agency*

permits pay-by-plate toll ~~processing and~~ payment of tolls and other charges in accordance with policies adopted by the issuing agency, it is prima facie evidence of a toll evasion violation for a person to enter the vehicular crossing or toll highway without at least one of the following: (A) lawful money of the United States in the person's immediate possession in an amount sufficient to pay the prescribed tolls or other charges due from that person, or (B) a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls, or (C) valid California vehicle license plates properly affixed to both the front and rear of the vehicle in which that person enters onto the vehicular crossing or toll highway. Where electronic toll collection is the only other method of paying tolls or other charges, the bill would provide that it is prima facie evidence of a toll evasion violation for a person to enter the vehicular crossing or toll highway without either (i) a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls, or (ii) valid California vehicle license plates properly affixed to both the front and rear of the vehicle in which that person enters onto the vehicular crossing or toll highway.

(2) Existing law provides that the officer or person authorized to issue a notice of toll evasion violation is not required to participate in an administrative review of the toll evasion violation and that the issuing agency is not required to produce any evidence other than the notice of toll evasion violation or a copy thereof, information received from the department identifying the registered owner of the vehicle, and a statement under penalty of perjury from the person reporting the violations. Under existing law perjury is a crime.

This bill would require *instead*, for a toll evasion violation that occurs on a vehicular crossing or toll highway where the issuing agency allows pay-by-plate toll ~~processing and~~ payment, *that* the required *evidence consisting of a statement under penalty of perjury be* from the officer or person ~~reporting the violation to~~ *authorized to issue a notice of toll evasion and* include a statement that the tolls or other charges and any applicable fee were not paid in accordance with the issuing agency's policies for pay-by-plate toll processing and payment. *The bill would not require that this statement be made under penalty of perjury. The bill would require that any officer or person who knowingly provides false information pursuant to this provision be subject to a civil penalty for each violation in the amount of \$250 up to a maximum amount of*

\$2,500. The bill would also authorize any public prosecutor to bring an action for a civil penalty in the name of the people of the State of California.

(3) The bill would make other technical, nonsubstantive and conforming changes to these provisions.

Because the bill would create new crimes, the bill would impose a state-mandated local program.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 23301.5 is added to the Vehicle Code, to  
2     read:

3     23301.5. Where an issuing agency permits pay-by-plate toll  
4     payment as described in subdivision (e) of Section 23302, it shall  
5     communicate, as practicable, the pay-by-plate toll amount in the  
6     same manner as it communicates other toll payment methods. The  
7     issuing agency shall provide publicly available information on  
8     how pay-by-plate toll payment works, including the toll amount,  
9     process for payment, and period of time a vehicle has to resolve  
10    the payment before an issuing agency may process the trip as a  
11    violation under Section 40255. Communication of this information  
12    may include the Department of Transportation's approved signage,  
13    posting of information on the issuing agency's Internet Web site,  
14    media advertising, public meeting or disclosure as required by the  
15    issuing agency's policies, or other methods of communication.  
16    Except where the issuing agency has an agreement with a vehicle  
17    owner otherwise, administrative costs shall be incorporated into  
18    the pay-by-plate toll amount, and no additional administrative  
19    costs shall be added above the posted pay-by-plate toll amount.

20    ~~SECTION 1.~~

21    SEC. 2. Section 23302 of the Vehicle Code is amended to read:

22    23302. (a) It is unlawful for a person to fail to pay tolls or  
23    other charges on any vehicular crossing or toll highway. Except

1 as otherwise provided in subdivision (b), (c), or (d), it is prima  
2 facie evidence of a violation of this section for a person to enter  
3 upon any vehicular crossing without either lawful money of the  
4 United States in the person's immediate possession in an amount  
5 sufficient to pay the prescribed tolls or other charges due from that  
6 person or a transponder or other electronic toll payment device  
7 associated with a valid Automatic Vehicle Identification account  
8 with a balance sufficient to pay those tolls. If a transponder or  
9 other electronic toll payment device is used to pay tolls or other  
10 charges due, the device shall be located in, or on the vehicle in a  
11 location so as to be visible for the purpose of enforcement at all  
12 times when the vehicle is located on the vehicular crossing or toll  
13 highway. Where required by the operator of a vehicular crossing  
14 or toll highway, this requirement applies even if the operator offers  
15 free travel or nontoll accounts to certain classes of users.

16 (b) For vehicular crossings and toll highways that use electronic  
17 toll collection as the only method of paying tolls or other charges,  
18 it is prima facie evidence of a violation of this section for a person  
19 to enter the vehicular crossing or toll highway without a  
20 transponder or other electronic toll payment device associated with  
21 a valid Automatic Vehicle Identification account with a balance  
22 sufficient to pay those tolls.

23 (c) For vehicular crossings and toll highways where the issuing  
24 agency, as defined in Section 40250, permits pay-by-plate-toll  
25 processing and payment of tolls and other charges in accordance  
26 with policies adopted by the issuing agency, it is prima facie  
27 evidence of a violation of this section for a person to enter the  
28 vehicular crossing or toll highway without at least one of the  
29 following:

30 (1) Lawful money of the United States in the person's immediate  
31 possession in an amount sufficient to pay the prescribed tolls or  
32 other charges due from that person.

33 (2) A transponder or other electronic toll payment device  
34 associated with a valid Automatic Vehicle Identification account  
35 with a balance sufficient to pay those tolls.

36 (3) ~~Valid California vehicle license plates properly affixed to~~  
37 ~~both the front and rear of attached pursuant to Section 4850.5 or~~  
38 ~~5200 to the vehicle in which that person enters onto the vehicular~~  
39 ~~crossing or toll highway.~~

(d) For vehicular crossings and toll highways where the issuing agency, as defined in Section 40250, permits pay-by-plate toll processing and payment of tolls and other charges in accordance with policies adopted by the issuing agency, and where electronic toll collection is the only other method of paying tolls or other charges, it is prima facie evidence of a violation of this section for a person to enter the vehicular crossing or toll highway without either a transponder or other electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay those tolls or valid California vehicle license plates properly affixed to both the front and rear of attached to the vehicle pursuant to Section 4850.5 or 5200 in which that person enters onto the vehicular crossing or toll highway.

(e) As used in this section, ~~“Pay-by-plate article, “pay-by-plate toll processing and payment”~~ means an issuing agency’s use of on-road vehicle license plate identification recognition technology to accept payment of tolls ~~within a specified period of time following the use of the vehicular crossing or toll highway by persons entering upon the vehicular crossing or toll highway without the payment of tolls or other charges by either cash payment in lawful money of the United States or use of an electronic toll payment device associated with a valid Automatic Vehicle Identification account with a balance sufficient to pay the tolls or other charges,~~ in accordance with policies adopted by the issuing agency.

(f) This section does not require an issuing agency to ~~implement offer pay-by-plate toll processing as a method for paying tolls.~~

~~SEC. 2.~~

SEC. 3. Section 40255 of the Vehicle Code is amended to read:

40255. (a) Within 21 days from the issuance of the notice of toll evasion violation, or within 15 days from the mailing of the notice of delinquent toll evasion, whichever occurs later, a person may contest a notice of toll evasion violation or a notice of delinquent toll evasion. In that case, the processing agency shall do the following:

(1) The processing agency shall either investigate with its own records and staff or request that the issuing agency investigate the circumstances of the notice with respect to the contestant’s written explanation of reasons for contesting the toll evasion violation. If,

1 based upon the results of that investigation, the processing agency  
2 is satisfied that the violation did not occur or that the registered  
3 owner was not responsible for the violation, the processing agency  
4 shall cancel the notice of toll evasion violation and make an  
5 adequate record of the reasons for canceling the notice. The  
6 processing agency shall mail the results of the investigation to the  
7 person who contested the notice of toll evasion violation or the  
8 notice of delinquent toll evasion violation.

9 (2) If the person contesting a notice of toll evasion violation or  
10 notice of delinquent toll evasion violation is not satisfied with the  
11 results of the investigation provided for in paragraph (1), the person  
12 may, within 15 days of the mailing of the results of the  
13 investigation, deposit the amount of the toll evasion penalty and  
14 request an administrative review. After January 1, 1996, an  
15 administrative hearing shall be held within 90 calendar days  
16 following the receipt of a request for an administrative hearing,  
17 excluding any time tolled pursuant to this article. The person  
18 requesting the hearing may request one continuance, not to exceed  
19 21 calendar days.

20 (b) The administrative review procedure shall consist of the  
21 following:

22 (1) The person requesting an administrative review shall indicate  
23 to the processing agency his or her election for a review by mail  
24 or personal conference.

25 (2) If the person requesting an administrative review is a minor,  
26 that person shall be permitted to appear at an administrative review  
27 or admit responsibility for a toll evasion violation without the  
28 necessity of the appointment of a guardian. The processing agency  
29 may proceed against that person in the same manner as if that  
30 person were an adult.

31 (3) (A) The administrative review shall be conducted before a  
32 reviewer designated to conduct the review by the issuing agency's  
33 governing body or chief executive officer. In the case of violations  
34 on facilities developed pursuant to Section 143 of the Streets and  
35 Highways Code, the processing agency shall contract with a public  
36 agency or a private entity that has no financial interest in the facility  
37 for the provision of administrative review services pursuant to this  
38 subdivision. The costs of those administrative review services shall  
39 be included in the administrative fees authorized by this article.

1 (B) In addition to any other requirements of employment, a  
2 reviewer shall demonstrate those qualifications, training, and  
3 objectivity prescribed by the issuing agency's governing body or  
4 chief executive as are necessary and which are consistent with the  
5 duties and responsibilities set forth in this article.

6 (C) The examiner's continued employment, performance  
7 evaluation, compensation, and benefits shall not be directly or  
8 indirectly linked to the amount of fines collected by the examiner.

9 (4) The officer or person authorized to issue a notice of toll  
10 evasion violation shall not be required to participate in an  
11 administrative review. The issuing agency shall not be required to  
12 produce any evidence other than the notice of toll evasion violation  
13 or copy thereof, information received from the department  
14 identifying the registered owner of the vehicle, and a statement  
15 under penalty of perjury from the person reporting the violation.  
16 ~~For a toll evasion violation that occurs on a vehicular crossing or~~  
17 ~~toll highway where the issuing agency allows pay-by-plate toll~~  
18 ~~processing and payment, as defined in Section 23302, the required~~  
19 ~~statement under penalty of perjury from the person reporting the~~  
20 ~~violation shall include a statement that the tolls or other charges~~  
21 ~~and any applicable fee was not paid in accordance with the issuing~~  
22 ~~agency's policies for pay-by-plate toll processing and payment.~~  
23 The documentation in proper form shall be considered prima facie  
24 evidence of the violation.

25 *(5) For a toll evasion violation that occurs on a vehicular*  
26 *crossing or toll highway where the issuing agency allows*  
27 *pay-by-plate toll payment, as defined in subdivision (e) of Section*  
28 *23302, the officer or person authorized to issue a notice of toll*  
29 *evasion violation shall not be required to participate in an*  
30 *administrative review. The issuing agency shall not be required*  
31 *to produce any evidence other than the notice of toll evasion*  
32 *violation or copy thereof, information received from the department*  
33 *identifying the registered owner of the vehicle, and a statement*  
34 *from the officer or person authorized to issue a notice of toll*  
35 *evasion that the tolls or other charges and any applicable fee was*  
36 *not paid in accordance with the issuing agency's policies for*  
37 *pay-by-plate toll payment. Any officer or person who knowingly*  
38 *provides false information pursuant to this paragraph shall be*  
39 *subject to a civil penalty for each violation in the minimum amount*  
40 *of two hundred fifty dollars (\$250) up to a maximum amount of*

1 *two thousand five hundred dollars (\$2,500). An action for a civil*  
2 *penalty may be brought by any public prosecutor in the name of*  
3 *the people of the State of California. The documentation in proper*  
4 *form shall be considered prima facie evidence of the violation.*

5 ~~(5)~~

6 (6) The review shall be conducted in accordance with the written  
7 procedure established by the processing agency which shall ensure  
8 fair and impartial review of contested toll evasion violations. The  
9 agency's final decision may be delivered personally or by first-class  
10 mail.

11 ~~SEC. 3.~~

12 SEC. 4. No reimbursement is required by this act pursuant to  
13 Section 6 of Article XIII B of the California Constitution because  
14 the only costs that may be incurred by a local agency or school  
15 district will be incurred because this act creates a new crime or  
16 infraction, eliminates a crime or infraction, or changes the penalty  
17 for a crime or infraction, within the meaning of Section 17556 of  
18 the Government Code, or changes the definition of a crime within  
19 the meaning of Section 6 of Article XIII B of the California  
20 Constitution.